



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

*See 0-1121*

**November 25, 1968**

**Honorable Ned Granger  
County Attorney  
Travis County Courthouse  
Austin, Texas**

**Opinion No. M-308**

**Re: Qualifications for the  
appointment to the posi-  
tion of deputy constable  
under the applicable state  
statutes and whether the  
position is deemed a  
"public office in this  
state" within the meaning  
of Article 1.05 of the  
Texas Election Code?**

**Dear Mr. Granger:**

**You have requested an opinion from this office on  
the following questions:**

**"1. Are there any statutory requirements  
as to residence of a deputy constable, and if  
there are, would you please cite them?**

**"2. Is the position of Deputy Constable  
a 'public office in this state' within the  
meaning of V.A.T.S. Election Code Art. 1.05?**

**"3. Must a man be a resident of a pre-  
cinct in order to qualify to serve as a dep-  
uty constable in that same precinct? If so,  
must he have resided in the precinct for any  
specified length of time?**

**"4. Must a man be a resident of a county  
in order to qualify to serve as a deputy sheriff  
of that county? If so, must he have resided in  
the county for any specified length of time?"**

**Article 6869, Vernon's Civil Statutes, reads in  
part as follows:**

**"Sheriffs shall have the power, by writing,**

to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the official oath, which shall be endorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the County Clerk and deposited in said office. . . ." (Emphasis added.)

Article 6879a, Vernon's Civil Statutes, reads in part as follows:

"Section 1. The duly elected Constable in each Justice Precinct having a city or town of less than eight thousand (8,000) population according to the preceding Federal Census may appoint one (1) Deputy and no more; and each Justice Precinct having a city or town of eight thousand (8,000) and less than forty thousand (40,000) population according to the preceding Federal Census may appoint two (2) Deputies and no more; and in each Justice Precinct having a town or city of forty thousand (40,000) population or more according to the preceding Federal Census may appoint five (5) Deputies and no more, and each and every instance said Deputy Constables shall qualify as required of Deputy Sheriffs. . . ." (Emphasis added.)

Article 1.05 of the Texas Election Code reads as follows:

"No person shall be eligible to be a candidate for, or to be elected or appointed to, any public office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state and is under none of the disabilities for voting which are stated in Article VI, Section 1 of the Constitution of Texas on the date of his appointment or of

the election at which he is elected, and unless he will have resided in this state for a period of twelve months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

"(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

"(2) For an independent or nonpartisan candidate in a general or special election, the applicable date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

"(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

"(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

"(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

"The foregoing requirements shall not apply to any office for which the Constitution or statutes of the United States or of this state prescribe qualifications in conflict herewith, and in case of conflict the provisions of such other laws shall control.

"Except as provided in Section 104 of this code, no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election. No ineligible

candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate received the necessary vote for nomination or election. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state, shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state."

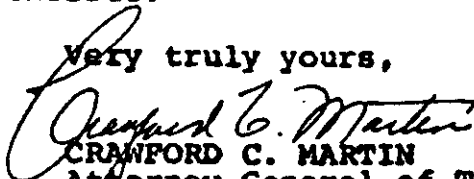
It is clearly evident that Article 1.05 of the Texas Election Code shows on its face that it relates to the eligibility requirements of a candidate for, or one to be elected or appointed to any elective public office in this state. It does not apply to the eligibility requirements to serve as a deputy sheriff or constable.

We have searched the statutes and can find no requirements for residence for deputies. We therefore concur with you that there are no statutory requirements as to residence for deputies.

S U M M A R Y

There are no statutory requirements as to residence for deputies. Article 1.05 of the Texas Election Code applies only to elective public offices and the eligibility of persons to be a candidate for or one to be elected or appointed thereto.

Very truly yours,

  
CRAWFORD C. MARTIN  
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